

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

IN RE: NATIONAL HOCKEY  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

MDL No. 14-2551 (SRN/BRT)

**This Document Relates To Case:**

*Carcillo v. NHL, et al.*,  
Case No. 0:18-cv-01715-SRN-BRT

**DEFENDANTS NATIONAL HOCKEY LEAGUE AND NATIONAL HOCKEY LEAGUE**  
**BOARD OF GOVERNORS' ANSWER AND AFFIRMATIVE DEFENSES TO**  
**COMPLAINT**

Defendants National Hockey League and National Hockey League Board of Governors (together, “NHL”) hereby set forth the following Answer and Affirmative Defenses to Plaintiffs’ Complaint (the “Complaint”), and demand trial by jury. Except as otherwise expressly set forth below, the NHL denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in the Complaint. Any allegation, averment, contention or statement in the Complaint not specifically and unequivocally admitted is denied, including any statement in a heading. The NHL preserves all objections regarding the admissibility of any allegations or statements made in the Complaint or this Answer. The NHL responds to each of the paragraphs of the Complaint as follows:

## RESPONSE TO “BACKGROUND”

1. The NHL denies the allegations in paragraph 1, except admits the NHL is an unincorporated association, organized as a joint venture to operate a professional ice hockey league consisting of thirty-one Member Clubs.

2. The NHL denies the allegations in paragraph 2, except admits the NHL is governed by its Board of Governors.

3. The NHL denies the allegations in paragraph 3.

4. The NHL denies the allegations in paragraph 4.

5. The NHL denies the allegations in paragraph 5, except admits the NHL's playing rules have been changed over time.

6. The NHL denies the allegations in paragraph 6, except states the NHL and National Hockey League Players' Association ("NHLPA") have evaluated and addressed certain matters related to the safety of active players and have provided related education to active players with respect to those matters.

7. The NHL denies the allegations in paragraph 7, except states in 1997, the NHL and the NHLPA jointly established and administered a collectively-bargained concussion program for active players.

8. The NHL denies the allegations in paragraph 8.

### **RESPONSE TO "THE PARTIES"**

9. The NHL denies the allegations in paragraph 9 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

10. The NHL admits Daniel Carcillo ("Carcillo") played 429 regular season NHL games, and Carcillo played for each of the NHL Clubs listed in paragraph 10.

11. The NHL denies the allegations in paragraph 11 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, except admits Carcillo participated in pre-season games, practices and morning skates.

12. The NHL denies the allegations in paragraph 12 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, except admits Carcillo participated in fights during certain NHL games in which he played.

13. The NHL denies the allegations in paragraph 13.

14. The NHL denies the allegations in paragraph 14 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

15. The NHL admits Nicholas Boynton (“Boynton”) played 605 regular season NHL games, and Boynton played for each of the NHL Clubs listed in paragraph 15.

16. The NHL denies the allegations in paragraph 16 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, except admits Boynton participated in pre-season games, practices and morning skates.

17. The NHL denies the allegations in paragraph 17 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, except admits Boynton participated in fights during certain NHL games in which he played.

18. The NHL denies the allegations in paragraph 18.

19. The NHL denies the allegations in paragraph 19, except admits the NHL is an unincorporated association, organized as a joint venture to operate a professional ice hockey league consisting of thirty-one Member Clubs located in cities in both the United States and Canada, including Chicago, Illinois, and the NHL maintains an office at 1185 Avenue of the Americas, New York, New York, 10036.

20. The NHL denies the allegations in paragraph 20, except admits each NHL Club appoints a Governor and Alternate Governors to the Board of Governors.

21. Paragraph 21 states legal conclusions to which no responsive pleading is

necessary. To the extent a response is required, the NHL denies the allegations in paragraph 21.

**RESPONSE TO “THE NHL’S PROMOTION OF VIOLENCE IN THE GAME OF HOCKEY”**

22. The NHL denies the allegations in paragraph 22, including footnote 1, except admits plaintiffs selectively and incompletely quote from a document produced by the NHL in *In re National Hockey League Players’ Concussion Injury Litigation*, MDL No. 2551 (the “MDL”), starting at Bates Number NHL0155220, and refers the Court to that document for its complete and accurate contents and context.

23. The NHL denies the allegations in paragraph 23 because plaintiffs do not identify the source that purportedly quotes an unnamed NHL executive, and the NHL is therefore without knowledge or information sufficient to form a belief as to the truth of the allegations therein. The NHL further denies the allegations in paragraph 23 to the extent they suggest the entire paragraph is a quote from an unnamed NHL executive, as plaintiffs fail to indicate what portion of paragraph 23 is purportedly quoted. The NHL further denies the truth of the allegations in paragraph 23.

24. The NHL denies the allegations in paragraph 24.

25. The NHL denies the allegations in paragraph 25, including footnote 2, except admits plaintiffs selectively and incompletely quote from a document produced by the NHL in the MDL, starting at Bates Number NHL0143212.

26. The NHL denies the allegations in paragraph 26.

27. The allegation in paragraph 27 that the NHL was “negligent” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 27,

including footnote 3, except admits plaintiffs selectively and incompletely quote from a document produced by the NHL in the MDL, starting at Bates Number NHL0031065.

28. The NHL denies the allegations in paragraph 28.

29. The NHL denies the allegations in paragraph 29, except admits plaintiffs selectively and incompletely quote language that has been attributed to Dr. Robert Cantu in news articles. The NHL further states Dr. Cantu has testified under oath that there is no scientifically-proven cause and effect relationship between subconcussive and concussive impacts and CTE, stating that “[t]he cause and effect, so-called causation of CTE . . . remains to be shown,” and that “[a]s far as we know, a concussion is not sufficient to result in chronic traumatic encephalopathy.” (Deposition of Robert Cantu 385:11-386:2.)

30. The NHL denies the allegations in paragraph 30.

31. The NHL denies the allegations in paragraph 31.

32. The NHL denies the allegations in paragraph 32.

33. The NHL denies the allegations in paragraph 33.

34. The NHL denies the allegations in paragraph 34, except, on information and belief, admits two members of Ontario’s provincial government asked Mr. McMurtry to investigate “violence” occurring in an Ontario Hockey Association Juniors game and Mr. McMurtry interviewed some NHL players in creating his report. The NHL denies the allegations and characterizations in the third sentence of paragraph 34.

35. The NHL denies the allegations in paragraph 35.

36. The NHL denies the allegations in paragraph 36 because plaintiffs appear to reference an unidentified source that purports to quote Bobby Hull, and the NHL is therefore

without knowledge or information sufficient to form a belief as to the truth of the allegations therein. The NHL denies the remaining allegations and characterizations in paragraph 36.

37. The NHL denies the allegations in paragraph 37, including footnote 4, except admits plaintiffs selectively and incompletely characterize a document produced by the NHL in the MDL, starting at Bates Number NHL0230647, and admits that in the 1980s there was approximately one fight for every game played.

38. The NHL denies the allegations in paragraph 38, including footnote 5, except admits plaintiffs selectively and incompletely characterize a document produced by the NHL in the MDL, starting at Bates Number NHL0211716.

39. The NHL denies the allegations and characterizations in paragraph 39, except admits plaintiffs purport to quote from a 1986 *Sports Illustrated* article.

40. The NHL denies the allegations in paragraph 40, including footnote 6, except admits plaintiffs selectively and incompletely quote from a document produced by the NHL in the MDL, starting at Bates Number NHL0015999.

41. The NHL denies the allegations and characterizations in paragraph 41, including footnote 8, except admits plaintiffs purport to quote from a book by John Branch about Derek Boogaard. The NHL further denies the allegations in footnote 7, except admits plaintiffs selectively and incompletely characterize a document produced by the NHL in the MDL, starting at Bates Number NHL0230647.

42. The NHL denies the allegations in paragraph 42.

43. The NHL denies the allegations in the opening clause of paragraph 43, including as applied to each subpart in paragraph 43. The NHL further denies the allegations in subparts (a), (b), (c) and (f). The NHL denies the allegations in subpart (e) because it is without

knowledge or information sufficient to form a belief as to the truth of the allegations therein.

The NHL denies the allegations in subpart (g), except admits the NHL and NHLPA jointly license Electronic Arts to develop and publish video games, including *NHL 14*, bearing the NHL and Club logos and certain player likenesses, and admits, on information and belief, these video games portray all aspects of NHL hockey as currently played as realistically as advances in video game technology allow, and EA marketed and promoted *NHL 14* and the marketing materials speak for themselves. The NHL denies the allegations in subpart (d), except admits at certain times, the NHL Network has produced the weekly program referenced in subpart (d).

44. The NHL denies the allegations in paragraph 44 because plaintiffs do not identify the source that purportedly quotes former NHL President John Ziegler, and the NHL is therefore without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

45. Paragraph 45 states legal conclusions to which no responsive pleading is necessary. To the extent a response is required, the NHL denies the allegations in paragraph 45.

46. The NHL denies the allegations in paragraph 46.

47. The NHL denies the allegations in paragraph 47.

48. The NHL denies the allegations in paragraph 48.

**RESPONSE TO “COUNT I CARCILLO V. NHL – LEAGUE INCREASED THE RISK OF BRAIN DAMAGE, ADDICTION AND DEPRESSION.”**

To the extent plaintiffs re-allege paragraphs 1-48, the NHL reasserts its answers to those paragraphs.

49. The NHL denies the allegations in paragraph 49.

50. The NHL denies the allegations in paragraph 50.

51. The NHL denies the allegations in paragraph 51.

52. The allegation in paragraph 52 that the NHL “breach[ed]” certain “duties” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 52.

53. The allegation in paragraph 53 that the NHL “breached its duty” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 53.

54. The allegation in paragraph 54 that the NHL acted with “negligence and conscious disregard” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 54, including footnote 9, except admits plaintiffs selectively and incompletely quote portions of a statement Commissioner Bettman made in 2011 and denies plaintiffs’ characterization of that statement.

55. The allegation in paragraph 55 concerning the alleged “proximate result of the NHL’s negligence” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the allegations and characterizations in paragraph 55.

56. The NHL denies the allegations and characterizations in the first sentence of paragraph 56, except admits plaintiffs selectively and incompletely quote statements attributed to Commissioner Bettman in news articles. The allegation in the second sentence of paragraph 56 that Commissioner Bettman’s statement “tolls any applicable statute of limitations” states a legal conclusion to which no response is necessary. To the extent a response is required, the NHL denies that allegation.



The NHL admits Carcillo demands judgment and denies he is entitled to any relief.

**RESPONSE TO “COUNT II BOYNTON V. NHL – LEAGUE INCREASED THE RISK OF BRAIN DAMAGE, ADDICTION AND DEPRESSION.”**

To the extent plaintiffs re-allege paragraphs 1-48, the NHL reasserts its answers to those paragraphs.

57. The NHL denies the allegations in paragraph 57.

58. The NHL denies the allegations in paragraph 58.

59. The NHL denies the allegations in paragraph 59.

60. The allegation in paragraph 60 that the NHL “breach[ed]” certain “duties” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 60.

61. The allegation in paragraph 61 that the NHL “breached its duty” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 61.

62. The allegation in paragraph 62 that the NHL acted with “negligence and conscious disregard” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 62, including footnote 10, except admits plaintiffs selectively and incompletely quote portions of a statement Commissioner Bettman made in 2011 and denies plaintiffs’ characterization of that statement.

63. The allegation in paragraph 63 concerning the alleged “proximate result of the NHL’s negligence” states a legal conclusion to which no responsive pleading is necessary. To

the extent a response is required, the NHL denies that allegation. The NHL denies the allegations and characterizations in paragraph 63.

64. The NHL denies the allegations and characterizations in the first sentence of paragraph 64, except admits plaintiffs selectively and incompletely quote statements attributed to Commissioner Bettman in news articles. The allegation in the second sentence of paragraph 64 that Commissioner Bettman's statement "tolls any applicable statute of limitations" states a legal conclusion to which no response is necessary. To the extent a response is required, the NHL denies that allegation.

The NHL admits Boynton demands judgment and denies he is entitled to any relief.

**RESPONSE TO "COUNT III CARCILLO V. NHL – LEAGUE FAILED TO WARN OF  
SIGNIFICANT RISK OF BRAIN DAMAGE"**

To the extent plaintiffs re-allege paragraphs 1-48, the NHL reasserts its answers to those paragraphs.

65. The NHL denies the allegations in paragraph 65.

66. The NHL denies the allegations in paragraph 66.

67. The NHL denies the allegations in paragraph 67.

68. The NHL denies the allegations in paragraph 68.

69. The allegation in paragraph 69 that the NHL owed a "duty" to its players states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 69.

70. The allegation in paragraph 70 that the NHL owed a "duty" to Carcillo states a legal conclusion to which no responsive pleading is necessary. To the extent a response is

required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 70.

71. The allegation in paragraph 71 that the NHL “failed to warn” Carcillo states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 71.

72. The allegation in paragraph 72 that the NHL “failed to warn” Carcillo states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 72.

73. The allegation in paragraph 73 that the NHL was “negligent” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 73, including each subpart.

74. The NHL denies the allegations in paragraph 74.

75. The NHL denies the allegations and characterizations in the first sentence of paragraph 75, except admits plaintiffs selectively and incompletely quote statements attributed to Commissioner Bettman in news articles. The allegation in the second sentence of paragraph 75 that Commissioner Bettman’s statement “tolls any applicable statute of limitations” states a legal conclusion to which no response is necessary. To the extent a response is required, the NHL denies that allegation.

The NHL admits Carcillo demands judgment and denies he is entitled to any relief.

**RESPONSE TO “COUNT IV BOYNTON V. NHL – LEAGUE FAILED TO WARN OF  
SIGNIFICANT RISK OF BRAIN DAMAGE”**

To the extent plaintiffs re-allege paragraphs 1-48, the NHL reasserts its answers to those paragraphs.

76. The NHL denies the allegations in paragraph 76.

77. The NHL denies the allegations in paragraph 77.

78. The NHL denies the allegations in paragraph 78.

79. The NHL denies the allegations in paragraph 79.

80. The allegation in paragraph 80 that the NHL owed a “duty” to its players states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 80.

81. The allegation in paragraph 81 that the NHL owed a “duty” to Boynton states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 81.

82. The allegation in paragraph 82 that the NHL “failed to warn” Boynton states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 82.

83. The allegation in paragraph 83 that the NHL “failed to warn” Boynton states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 83.

84. The allegation in paragraph 84 that the NHL was “negligent” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 84, including each subpart.

85. The NHL denies the allegations in paragraph 85.

86. The NHL denies the allegations and characterizations in the first sentence of paragraph 86, except admits plaintiffs selectively and incompletely quote statements attributed to Commissioner Bettman in news articles. The allegation in the second sentence of paragraph 86 that Commissioner Bettman’s statement “tolls any applicable statute of limitations” states a legal conclusion to which no response is necessary. To the extent a response is required, the NHL denies that allegation.

The NHL admits Boynton demands judgment and denies he is entitled to any relief.

**RESPONSE TO “COUNT V CARCILLO V. NHL – LEAGUE MISREPRESENTED THE RISK OF BRAIN DAMAGE”**

To the extent plaintiffs re-allege paragraphs 1-48, the NHL reasserts its answers to those paragraphs.

87. The NHL denies the allegations in paragraph 87.

88. The NHL denies the allegations in paragraph 88.

89. The NHL denies the allegations in paragraph 89.

90. The NHL denies the allegations in paragraph 90.

91. The NHL denies the allegations in paragraph 91.

92. The NHL denies the first sentence of paragraph 92 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein. The allegation in the second sentence of paragraph 92 that Carcillo “reasonably relied” on the

NHL states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 92.

93. The allegation in paragraph 93 that Carcillo reasonably relied on the NHL states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 93.

94. The NHL denies the allegations in paragraph 94.

The NHL admits Carcillo demands judgment and denies he is entitled to any relief.

**RESPONSE TO “COUNT VI BOYNTON V. NHL – LEAGUE MISREPRESENTED THE RISK OF BRAIN DAMAGE”**

To the extent plaintiffs re-allege paragraphs 1-48, the NHL reasserts its answers to those paragraphs.

95. The NHL denies the allegations in paragraph 95.

96. The NHL denies the allegations in paragraph 96.

97. The NHL denies the allegations in paragraph 97.

98. The NHL denies the allegations in paragraph 98.

99. The NHL denies the allegations in paragraph 99.

100. The NHL denies the first sentence of paragraph 100 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein. The allegation in the second sentence of paragraph 100 that Boynton “reasonably relied” on the NHL states a legal conclusion to which no responsive pleading is necessary. To the extent a

response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 100.

101. The allegation in paragraph 101 that Boynton reasonably relied on the NHL states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 101.

102. The NHL denies the allegations in paragraph 102.

The NHL admits Carcillo demands judgment and denies he is entitled to any relief.

### **RESPONSE TO DEMAND FOR JURY TRIAL**

The NHL admits plaintiffs demand a trial by jury.

### **PREAMBLE TO AFFIRMATIVE AND OTHER DEFENSES**

The NHL reserves the right to rely upon any of the following or additional defenses to claims asserted by plaintiffs to the extent that such defenses are supported by information developed through discovery or evidence at trial and thus reserves the right to amend its Answer and Defenses. By asserting the following affirmative defenses, the NHL does not allege or admit it has the burden of proof or the burden of persuasion with respect to any of these matters:

### **FIRST DEFENSE**

Plaintiffs may have failed to state a claim upon which relief can be granted.

### **SECOND DEFENSE**

Because plaintiffs are not completely diverse from the NHL, plaintiffs cannot base subject matter jurisdiction on diversity under 28 U.S.C. § 1332. Nevertheless, this Court has original jurisdiction of this action under 28 U.S.C. § 1331 because the claims in the Complaint

arise under the laws of the United States, specifically Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (“Section 301”). Section 301 requires the application of federal substantive law and completely preempts and displaces entirely any state cause of action. It does not matter that a lawsuit purports to assert tort claims under state law instead of contract claims. If the claims are founded directly on rights created by collective bargaining agreements or are substantially dependent on analysis of a collectively-bargained agreement, they are federal claims governed by Section 301.

### **THIRD DEFENSE**

Plaintiffs’ claims are preempted, in whole or in part, under federal labor law and/or are required to be submitted to arbitration or for failure to exhaust his remedies under applicable collective bargaining agreements governing the terms and conditions of his employment as an NHL Player.

### **FOURTH DEFENSE**

Plaintiffs’ claims may be barred, in whole or in part, by the exclusive remedy provisions of various states’ applicable Workers’ Compensation statutes.

### **FIFTH DEFENSE**

Plaintiffs’ claims may be barred, in whole or in part, because to the extent plaintiffs seek to impose tort liability on defendants in connection with defendants’ promotion and marketing of the game of hockey, such conduct is protected speech under the First Amendment to the United States Constitution, thereby precluding tort liability.

### **SIXTH DEFENSE**

Plaintiffs’ claims may be barred by the applicable statutes of limitations and/or repose.



**SEVENTH DEFENSE**

Plaintiffs have not sustained any injury or damages compensable by law.

**EIGHTH DEFENSE**

Plaintiffs' claims may be barred, in whole or part, from recovery due to their contributory and/or comparative negligence.

**NINTH DEFENSE**

Plaintiffs' claims may be barred, in whole or in part, from recovery due to their assumption of the risk.

**TENTH DEFENSE**

Any injury or damage sustained by plaintiffs was caused, in whole or in part, by plaintiffs' own lack of due care and fault, and/or by pre-existing conditions, and/or the lack of due care or fault of others for whom the NHL has no responsibility or control.

**ELEVENTH DEFENSE**

Plaintiffs' claims may be barred because plaintiffs' injuries were actually or proximately caused, in whole or in part, by the intervening or superseding conduct of independent third parties and non-parties to this action or events that were extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the NHL's conduct or control.

**TWELFTH DEFENSE**

Plaintiffs' claims may be barred, in whole or in part, because plaintiffs did not rely to their detriment upon any statement or alleged omission by the NHL in electing to play hockey.

### **THIRTEENTH DEFENSE**

Plaintiffs' claims may be barred, in whole or in part, from recovery because they have made statements or taken actions that estop them from asserting their claims or constitute a waiver of their claims.

### **FOURTEENTH DEFENSE**

An award of punitive damages against the NHL would amount to the deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments of the United States Constitution, the Eighth Amendment of the United States Constitution, and in violation of the constitutions of the various states that govern the claims in plaintiffs' Complaint. The criteria for determining whether and what amount of punitive damages may be awarded are impermissibly vague, imprecise, and inconsistent, and for these and other reasons tend to promote the award of excessive damages verdicts, and are therefore not in accord with, and are antagonistic to, the protections of due process and the other aforementioned constitutional provisions.

### **FIFTEENTH DEFENSE**

Plaintiffs may have failed to mitigate their damages.

### **SIXTEENTH DEFENSE**

To the extent plaintiffs have settled some or all of their claims, if any, against other parties, or potential alleged joint tortfeasors, then the NHL is entitled a credit in the amount of said settlement(s) and/or the amount of the settling parties' allocated percentage of fault.

**SEVENTEENTH DEFENSE**

Plaintiffs may be barred, in whole or in part, from recovery, on the ground that they are subject to the defense of accord and satisfaction.

**EIGHTEENTH DEFENSE**

Plaintiffs' damages, if any, may be barred, limited, or offset in the amount of any reimbursement received by plaintiffs as a result of any workers compensation proceeding, insurance or other health benefits plan, or any amounts paid by any insurance or other health benefits plan.

**NINETEENTH DEFENSE**

Plaintiffs' claims may be barred because of plaintiffs' failure to join necessary and indispensable parties.

**TWENTIETH DEFENSE**

Any fraud-based claims are barred for failure to plead them with the particularity required under Rule 9(b) of the Federal Rules of Civil Procedure.

**TWENTY-FIRST DEFENSE**

Plaintiffs' claims may be barred because the NHL, as an unincorporated association of its Member Clubs, is not a proper entity to assert tort claims against based on applicable state law.

**TWENTY-SECOND DEFENSE**

Plaintiffs' claims may be barred, in whole or in part, from recovery, due to spoliation of evidence.

**TWENTY-THIRD DEFENSE**

Plaintiffs may be barred, in whole or in part, from recovery by the doctrine of laches.

**JURY TRIAL DEMANDED**

The NHL hereby demands a trial by jury on all issues so triable.

Dated: June 28, 2019

Respectfully submitted,

John H. Beisner  
Jessica D. Miller  
**SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP**  
1440 New York Avenue, N.W.  
Washington, D.C. 20005-2111  
Telephone: (202) 371-7000

Shepard Goldfein  
Matthew M. Martino  
**SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP**  
Four Times Square  
New York, New York 10036-6522  
Telephone: (212) 735-3000

Joseph Baumgarten  
Adam M. Lupion  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, New York 10036-8299  
Telephone: (212) 969-3000

s/Daniel J. Connolly  
Daniel J. Connolly (#197427)  
Joseph M. Price (#88201)  
Linda S. Svitak (#178500)  
Aaron D. Van Oort (#315539)  
**FAEGRE BAKER DANIELS LLP**  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402  
Telephone: (612) 766-7000

***ATTORNEYS FOR DEFENDANT NATIONAL HOCKEY LEAGUE***